

# Notice of Allowability

Application No.

10/051,752

Examiner

Carl H. Layno

Applicant(s)

PUSKAS, JOHN D.

Art Unit

3766

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Papers filed January 12, 2006.
2. ☒ The allowed claim(s) is/are 1-120.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 1/12/06
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

**DETAILED ACTION**

1. Acknowledgment is made of applicant's amendment, which was received by the Office on January 12, 2006.

2. Claims 1-120 are active and pending.

***Information Disclosure Statement***

3. Acknowledgment is made of applicant's Information Disclosure Statement (PTO-1449), which was received by the Office on January 12, 2006.

***Claim Rejections - 35 USC § 102***

4. Upon further reconsideration of applicant's arguments and amendments to the claims, the Examiner is withdrawing the 35 U.S.C 102(b) and 102(e)/103(a) rejections of Wernicke et al '480 and Adams '187, respectively, which were made against claims 1, 3, 4, 7-11, 25-28, and 37-40 in the last Office action.

***Allowable Subject Matter***

5. Claims 1-120 are allowed.

***Examiner's Amendment***

6. The application has been amended as follows:

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-p.1 of the specification, line 13, after the words "November 20, 2000," and before the word "which", insert the words "now U.S. Patent No. 6,429,217," and

-p.1 of the specification, line 15, replace the words "now allowed" with the words "now U.S. Patent No. 6,479,523".

### *Examiner's Comments*

7. The claims in this application recite the apparatus' structural features corresponding to the method claims in related application 11/015,321 and patents 6,778,854 and 6,656,960.

### *Conclusion*

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Although the Hill et al (US 2004/0162584-A1) U.S. Patent Publication describes a method and system using a plurality of esophageal electrodes (Figs.2-6) capable of stimulating the vagus nerve (p.3, paragraph [0037], lines 1-3 and p.5, paragraph [0050], lines 1-3) with a priority filing date of April 30, 1996, this reference could not be used as prior art since the use of esophageal electrodes in this type of device did not occur until September 26, 2000 with the filing of what is now U.S Patent No.6,532,388. This date fails to pre-date applicant's valid priority filing dates.

Similarly, the Aldrich (US 2006/0015151 A1, US 2005/0240231 A1, and US 2005/0203501 A1) U.S. Patent Publications all describe the use of esophageal electrodes for

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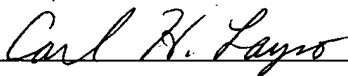
indirectly stimulating the vagus nerve. None, however, pre-date applicant's priority filing dates.

Consequently, none can be used as valid prior art.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl H. Layno whose telephone number is (571) 272-4949. The examiner can normally be reached on 9/4/5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CARL LAYNO  
PRIMARY EXAMINER

CHL  
3/29/2006